

Judge Lasnik

Presented to the Court by the foreman of the  
Grand Jury in open Court, in the presence of  
the Grand Jury and FILED in The U.S.  
DISTRICT COURT at Seattle, Washington.

February 13, 2004  
BRUCE RIFKIN, Clerk  
By *A. Brent Johnson* Deputy

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY R. MARTIN  
J. DAVID SMITH  
JOHN H. WHITE  
EDWARD L. TEZAK,

Defendants.

No. CR03-0370RSL

SUPERSEDING INDICTMENT

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The Grand Jury charges that:

03-CR-00370-IND1

COUNT 1

(Conspiracy)

1. From a date uncertain but no later than in or about March 1999, and  
continuing until the present, within the Western District of Washington and elsewhere,  
the defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and  
EDWARD L. TEZAK, together with other persons known and unknown to the Grand  
Jury, did unlawfully, willfully and knowingly combine, conspire, confederate and agree  
among themselves and with each other to commit certain offenses against the United  
States, as follows:

A. Introduction

At all times relevant to this Indictment:

2. Holmes Harbor Sewer District ("HHSD") was a municipal corporation and

1 political subdivision of the State of Washington, located on Whidbey Island, in Island  
2 County, Washington. It was governed by an elected board of commissioners who served  
3 without pay except for reimbursement of nominal expenses. HHSD was primarily  
4 engaged in providing water and sewer services to approximately 200 homes on Whidbey  
5 Island. HHSD had an annual operating budget of approximately \$250,000 and two  
6 employees, a secretary-bookkeeper and a sewer plant manager.

7 3. On or about October 26, 2000, HHSD issued \$20,025,000 in tax-exempt  
8 municipal bonds at the direction of and as part of a scheme to defraud committed by the  
9 respective defendants identified below. The purported purpose of the bonds was to fund  
10 a portion of the costs for the development of a commercial office complex called the  
11 Silver Sound Corporate Center. The bonds were purchased by approximately 200  
12 individuals and entities. Those purchasers relied upon representations made orally and  
13 contained in various required disclosure documents including Preliminary Official  
14 Statements ("POS") and an Official Statement ("OS"). The bonds were underwritten by  
15 IBIS Securities, of Walnut Grove, California, which sold them through broker-dealers,  
16 including Prudential Securities, Alamo Capital and others. As set forth below, numerous  
17 representations made orally in connection with the bond issuance and written  
18 representations contained in the POSs and the OS, which were relied upon by the  
19 underwriter, broker-dealers and the bond purchasers, were materially false. The bonds  
20 are currently in default and the undistributed proceeds, in the approximate amount of \$8.5  
21 million, are in the possession of the Island County Clerk Trust Fund. On May 22, 2003,  
22 in a class action civil lawsuit brought by the bond purchasers, the Island County Superior  
23 Court declared the bond issuance invalid and unenforceable.

24 4. The Silver Sound Corporate Center was a proposed commercial  
25 development located within the boundaries of the city of Everett, Snohomish County,  
26 Washington. The development plan envisioned a 39.9 acre parcel of property (the "40  
27 Acres") that would be divided into two parts. Twenty-five acres would be owned by the  
28 developer, using private and independent financing to construct and lease six office

1 buildings (the "25 Private Acres"). The remaining 15 acres, which included wetlands,  
2 slopes, and other non-developable land, would be purchased by HHSD with the tax-  
3 exempt municipal bond proceeds (the "15 Public Acres"). Bond proceeds would also be  
4 used to build public infrastructure such as sewer, drainage and roads for the project. The  
5 25 Private Acres and leased commercial office space were to undergo assessments in  
6 amounts sufficient to meet the payment obligations for the HHSD bonds. The bonds were  
7 amortized for full repayment in approximately twenty years.

8         5.       TERRY R. MARTIN ("Mr. MARTIN"), was a real-estate developer in  
9 Mukilteo, Washington, doing business through and in the names of various Washington  
10 State corporations, including Silver Sound LLC, Silver Legacy Corporation and Marwest,  
11 Inc., along with Silver Inc., a Nevada Corporation. As set forth more fully below, Mr.  
12 MARTIN induced HHSD to issue the bonds based upon fraudulent representations  
13 concerning the purchase terms of the 40 Acres, that the Silver Sound Corporate Center  
14 had been pre-leased, that a construction contract had been finalized, that permits were in  
15 place and that private financing had been committed. Those false representations misled  
16 and deceived HHSD, the underwriter, the broker-dealers and the bond purchasers.

17         6.       J. DAVID SMITH ("Mr. SMITH"), a resident of Edmonds, Washington,  
18 was an attorney licensed to practice law in the state of Washington and acted as counsel  
19 to, and a business partner of Mr. MARTIN. Mr. SMITH worked on the bond issuance,  
20 assisted in the preparation of various documents, and interacted with the HHSD  
21 commissioners, bond counsel, bond underwriter and broker-dealers. Like Mr. MARTIN,  
22 Mr. SMITH induced HHSD to issue the bonds based upon fraudulent representations  
23 concerning the purchase terms of the 40 Acres, that the Silver Sound Corporate Center  
24 had been pre-leased, that a construction contract had been finalized, that permits were in  
25 place and that private financing had been committed. Those false representations misled  
26 and deceived HHSD, the underwriter, the broker-dealers and the bond purchasers.

27         7.       JOHN H. WHITE ("Mr. WHITE"), a resident of Lynnwood, Washington,  
28 was a mortgage broker and formerly Vice President of Signal Mortgage, a Washington

1 corporation. While purportedly acting on the behalf of Signal Mortgage, Mr. WHITE  
2 claimed to have created Goldman Sig LLC, another Washington corporation which was to  
3 have loan funds available from Goldman Sachs, Private Client Services. Goldman Sig  
4 LLC purportedly committed about \$63 million in loan funds to Mr. MARTIN for the  
5 construction of the Silver Sound Corporate Center and to provide a line of credit  
6 guaranteeing repayment of the bonds in the event of default. Those representations were  
7 false. There was no financing committed and Goldman Sachs was unaware of the  
8 transaction. Although Mr. WHITE was a director and incorporator of an entity named  
9 Goldman Sig Inc., there was is no entity named Goldman Sig LLC recognized by the  
10 Secretary of State for the State of Washington.

11 8. EDWARD L. TEZAK ("Mr. TEZAK"), formerly a resident of Everett,  
12 Washington, was a licensed attorney in the state of Washington and a principal of Air  
13 Medical Systems of America, purportedly a tax-exempt charitable organization. Mr.  
14 TEZAK was also a director and incorporator of Goldman Sig, Inc. Mr. TEZAK claimed  
15 a relationship with Goldman Sachs and falsely represented that about \$63 million in funds  
16 were available to loan to Mr. MARTIN for the construction of the Silver Sound Corporate  
17 Center and for guaranteeing repayment of the bonds.

18 **B. Objects of the Conspiracy**

19 The objects of the conspiracy were:

20 9. To unlawfully, knowingly, and willfully, directly and indirectly, by the use  
21 of means and instrumentalities of interstate commerce, and of the mails, use and employ,  
22 in connection with the purchase and sale of securities, manipulative and deceptive devices  
23 and contrivances, by (a) employing devices, schemes, and artifices to defraud; (b) making  
24 untrue statements of material facts and omitting to state material facts necessary to make  
25 the statements made, in light of the circumstances in which they were made, not  
26 misleading; and (c) engaging in acts, practices, and courses of business which operated  
27 and would operate as a fraud and deceit upon other persons, in violation of Title 15,  
28 United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal

1 Regulations, Section 240.10b-5.

2 10. To knowingly and willfully transmit and cause to be transmitted by wire  
3 communication in interstate and foreign commerce, writings, signs, signals, pictures, and  
4 sounds, in furtherance of a scheme and artifice to defraud and to obtain money and  
5 property by means of false and fraudulent pretenses, representations, and promises, in  
6 violation of Title 18, United States Code, Section 1343.

7 **C. Manner and Means of the Conspiracy and Scheme to Defraud**

8 11. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
9 Mr. SMITH insinuated themselves into a relationship with the HHSD for the purpose of  
10 fraudulently manipulating the HHSD Board of Commissioners to use its public authority  
11 to raise funds for a private development from which the defendants stood to profit. It was  
12 further part of the conspiracy and scheme to defraud that the HHSD Board of  
13 Commissioners was duped into approving an issuance of \$20,025,000 in municipal bonds  
14 and further duped into making various factual representations about those bonds which  
15 were later discovered to be false and fraudulent.

16 12. It was part of the conspiracy and scheme to defraud that Mr. MARTIN,  
17 acting through his company Silver Sound LLC, would acquire the 40 Acres through a  
18 transaction financed almost entirely by the proceeds of the HHSD's bond issuance. Mr.  
19 MARTIN and Mr. SMITH concealed from the HHSD, the bond underwriter, broker-  
20 dealers and bond purchasers that at the time the bonds issued, Mr. MARTIN was selling  
21 the 15 Public Acres to the HHSD for \$6.2 million of bond proceeds while simultaneously  
22 using the same \$6.2 million to purchase the entire 40 Acres. The net result was that Mr.  
23 MARTIN acquired the 25 Private Acres for his own company with essentially none of his  
24 own funds. Non-disclosure of those terms, and the use of bond proceeds to purchase the  
25 entire 40 Acres, was a material omission and a misrepresentation that affected the  
26 decisions of the HHSD, bond underwriter, broker-dealers and bond purchasers.

27 13. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
28 Mr. WHITE caused and directed the preparation of an appraisal, upon which the HHSD,

1 bond underwriter, broker-dealers and bond purchasers relied. The appraisal contained  
2 material misrepresentations and omissions concerning the purchase terms of the real  
3 property, leases, construction financing, and the construction contractor. At Mr.  
4 MARTIN and Mr. WHITE's direction, the appraisal was also modified to omit an as-is  
5 valuation of the property, thereby causing another fraudulent and material omission.

6 14. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
7 Mr. SMITH represented that the office buildings for the Silver Sound Corporate Center  
8 had been pre-leased to Microsoft. The existence of that lease provided the basis for an  
9 appraisal supporting the proposed value of the project and the source of funds for  
10 repaying the bond assessments. In truth and in fact, there was no lease with Microsoft  
11 and those representations were false and fraudulent.

12 15. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
13 Mr. SMITH represented verbally and in a POS, as well as in the final OS, that a substitute  
14 lessee/tenant had committed to renting all 500,000 square feet of the Silver Sound  
15 Corporate Center. In truth and in fact, the lease agreement signed by that tenant, R. A.  
16 King, Inc., of Houston, Texas, was a sham. R. A. King, Inc. had no ability to occupy  
17 500,000 square feet of office space at the Silver Sound Corporate Center. Additionally,  
18 simultaneous to signing the lease, R. A. King, Inc. was provided a written side agreement  
19 authorizing it to unilaterally cancel the lease for any reason or for no reason at all, and  
20 without consequence. That side agreement was kept secret by the defendants and not  
21 disclosed to HHSD, bond counsel, the bond underwriter, or the bond purchasers.  
22 Additionally, a letter of intent stated that J. Zacket Enterprises, owned by Mr. TEZAK,  
23 was purportedly a division of R.A. King, Inc., and intended to lease the Silver Sound  
24 Corporate Center. That letter of intent was false and fraudulent. J. Zacket Enterprises  
25 was not a division of R.A. King, Inc., and had no ability to rent the office space.

26 16. It was part of the conspiracy and scheme to defraud that Mr. MARTIN, Mr.  
27 SMITH, Mr. WHITE and Mr. TEZAK represented, orally and in a POS and the final OS,  
28 that lenders had committed a \$43 million loan to finance construction of the six office

1 buildings for the Silver Sound Corporate Center and another \$20.5 million line of credit  
2 guaranteeing repayment of the bonds. Those representations identified the lender as  
3 Goldman Sig LLC, purportedly comprised of Goldman Sachs, Private Client Services, of  
4 Chicago, Illinois, and Signal Mortgage of Everett, Washington. In truth and in fact, there  
5 were no loan funds or line of credit. Goldman Sachs had no involvement and no  
6 knowledge of the transaction. Signal Mortgage, a loan brokerage, had no ability to fund  
7 such loans.

8 17. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
9 Mr. SMITH represented verbally, and in the POS and OS, that there was a binding  
10 construction contract with Howard S. Wright Construction to build the six office  
11 buildings. A copy of a maximum price contract was provided to the underwriter and its  
12 existence was represented to the HHSD. In truth and in fact, there was only a preliminary  
13 agreement which lacked building plans and costs. That preliminary agreement was  
14 fraudulently altered, after it was signed by Howard S. Wright Construction, to add a  
15 maximum price for the construction contract. That alteration was unknown and  
16 unauthorized by Howard S. Wright Construction.

17 18. It was part of the conspiracy and scheme to defraud that Mr. MARTIN and  
18 Mr. SMITH represented orally, and in the POS and OS, that necessary permits and  
19 approvals were in place to allow construction of the Silver Sound Corporate Center to  
20 commence immediately upon issuance of the bonds. In truth and in fact, such permits and  
21 approvals were not in place.

22 19. It was part of the conspiracy and scheme to defraud that Mr. MARTIN  
23 caused and directed the submission of pay requests to the HHSD Board of Commissioners  
24 requesting reimbursement of expenses and costs for prior work that purportedly had been  
25 performed on the public infrastructure portions of the Silver Sound Corporate Center  
26 project. Those pay requests were false and fraudulent in that much of the represented  
27 work had not, in fact, been performed, and supporting documentation was nonexistent  
28 and/or falsified. The fraudulent pay requests were actually a vehicle to directly obtain

1 bond proceeds and to pay other bills of Mr. MARTIN, including amounts he promised  
2 and owed to his co-conspirators and others.

3 20. It was part of the conspiracy and scheme to defraud that Mr. MARTIN  
4 compromised and manipulated individuals working for the HHSD, on the bond issuance,  
5 and on the development project, including parties and professionals rendering services.  
6 Mr. MARTIN did so with offers of lucrative future work, offers or agreements to  
7 purchase their businesses, and payments of past-due bills or other payments of money.

8 21. It was part of the conspiracy and scheme to defraud that the bond issuance  
9 was a vehicle through which defendants gained access to bond funds which they diverted  
10 to enrich themselves. The funds paid to defendants and others in connection with the  
11 fraudulent bonds exceeded \$2.5 million, wholly apart from the \$6.2 million in bond  
12 proceeds that were used to purchase the entire 40 Acres.

13 **D. Overt Acts**

14 22. In furtherance of the conspiracy and to promote the objects thereof,  
15 defendants Mr. MARTIN, Mr. SMITH, Mr. WHITE, and Mr. TEZAK, and other persons  
16 known and unknown to the Grand Jury, committed and caused to be committed, among  
17 others, the overt acts described in counts 2-20 of this Indictment, and the following:

18 **a. False Land Values and Purchase Terms**

19 23. On or about May 7, 1999, a real estate agent acting as nominee for Mr.  
20 MARTIN entered into an agreement to purchase the 40 Acres for \$5.95 million. The  
21 contract was subsequently extended pursuant to extension fees and addendums and  
22 eventually closed on October 26, 2000. The final purchase price was \$6.21 million.

23 24. On a date uncertain, but at some time during the fall of 1999, Mr. MARTIN  
24 made false representations to and misled a commercial real estate agent to believe that  
25 Mr. MARTIN already owned the 40 Acres to be used for the Silver Sound Corporate  
26 Center.

27 25. On or about November 4, 1999, and again on February 9, 2000, Mr.  
28 MARTIN attempted to persuade a commercial real estate agent to write letters falsely



1 stating an inflated value for the 15 Public Acres.

2 26. On or about February 1, 2000, Mr. MARTIN and Mr. WHITE caused and  
3 directed the modification of an appraisal, prepared for Signal Mortgage, Inc., for the  
4 Silver Sound Corporate Center, to delete all references to an "as is" value for the 40  
5 Acres. That value, which was based upon Mr. MARTIN's purchase price of about \$6.2  
6 million for the 40 Acres, was thus concealed. As part of the bond issuance, the HHSD  
7 paid about \$6.2 million for the 15 Public Acres and those bond funds, unbeknownst to the  
8 HHSD, fully paid for Mr. MARTIN's acquisition of the entire 40 Acres.

9 27. On or about February 9, 2000, Mr. MARTIN solicited and directed the  
10 preparation of letters from other real estate agents addressed to the HHSD falsely stating  
11 inflated values for the 15 Public Acres to be purchased by the HHSD, including one letter  
12 falsely stating a value of \$6.21 million.

13 28. On or about October 26, 2000, Mr. MARTIN's purchase of the 40 Acres  
14 closed, at Pacific Northwest Escrow, for a final purchase price of \$6.21 million. That  
15 purchase was funded by bond proceeds transferred to escrow in the amount of \$6.21  
16 million.

17 **b. False Leases**

18 29. On or about October 1, 1999, Mr. MARTIN caused and directed a  
19 commercial real estate agent to write letters falsely and fraudulently representing that  
20 Microsoft intended to lease the Silver Sound Corporate Center.

21 30. On or about December 1, 1999, Mr. MARTIN directed the creation of a  
22 false and fraudulent lease agreement with an undisclosed tenant. The tenant's identity  
23 was blacked-out on the lease agreement. Thereafter, Mr. MARTIN and Mr. SMITH  
24 falsely represented that Microsoft was the undisclosed tenant.

25 31. On or about February 1, 2000, Mr. MARTIN and Mr. WHITE caused and  
26 directed the issuance of an appraisal expressly predicated upon the false and fraudulent  
27 representation that the Silver Sound Corporate Center had been pre-leased to an  
28 undisclosed tenant with a Triple A credit rating.

1        32.    On or about March 2, 2000, Mr. MARTIN provided the false and fraudulent  
2 lease to the underwriter, bond counsel and parties involved in preparation of the POS.

3        33.    At meetings in June 2000, Mr. MARTIN, Mr. SMITH and Mr. WHITE  
4 falsely and fraudulently represented to potential bond investors Franklin Templeton and  
5 Putnam Investments that the Silver Sound Corporate Center had been pre-leased to  
6 Microsoft but the lease was subject to a confidentiality and non-disclosure agreement.

7        34.    On or about June 23, 2000, following requests from prospective investors  
8 for disclosure of the tenant, Mr. MARTIN prepared and delivered a letter to the bond  
9 underwriter and others stating that the lease had been terminated.

10       35.    On or about September 14, 2000, Mr. MARTIN and Mr. SMITH directed a  
11 commercial real estate agent to prepare a lease for all six office buildings of the Silver  
12 Sound Corporate Center, to R. A. King, Inc., of Houston, Texas.

13       36.    On or about September 14, 2000, Mr. MARTIN falsely represented to R. A.  
14 King, Inc., that Microsoft might become a sub-tenant at the Silver Sound Corporate  
15 Center.

16       37.    On or about September 21, 2000, Mr. MARTIN and Mr. TEZAK caused  
17 and directed a commercial real estate agent to prepare a letter of intent falsely stating that  
18 J. Zacket Enterprises was a division of R. A. King, Inc., and intended to lease the Silver  
19 Sound Corporate Center.

20       38.    On or about September 26, 2000, unbeknownst to the commercial real  
21 estate agent who prepared the R. A. King, Inc. lease, Mr. MARTIN and Mr. SMITH  
22 prepared and delivered to R. A. King, Inc., a secret side-agreement that allowed R. A.  
23 King, Inc. to unilaterally cancel the lease at any time, for any reason or no reason at all,  
24 without consequence.

25       39.    On or about September 28, 2000, Mr. MARTIN, Mr. WHITE and Mr.  
26 SMITH caused and directed the preparation of an amendment to the appraisal which  
27 falsely represented that Mr. MARTIN was negotiating a lease for the entire Silver Sound  
28 Corporate Center on identical terms as the prior confidential tenant, while failing to

1 disclose the secret side-agreement permitting unilateral cancellation.

2 40. On or about October 26, 2000, in connection with the bond issuance, Mr.  
3 MARTIN and Mr. SMITH falsely represented in the written OS that R. A. King, Inc. had  
4 executed a lease, omitting the material fact that the lease was accompanied by a secret  
5 side-agreement allowing unilateral cancellation of the lease.

6 c. Construction Contract and Permits

7 41. During the time intervening between approximately May 1, 2000, and  
8 October 26, 2000, Mr. MARTIN and his agents falsely represented to the HHSD Board of  
9 Commissioners, on numerous occasions orally and in writing, that permits were either in  
10 place or would be issued in due course for development of the Silver Sound Corporate  
11 Center and that construction would commence immediately upon issuance of the bonds.

12 42. During the time period between May 1, 2000, and October 26, 2000,  
13 Mr. MARTIN and Mr. SMITH falsely represented to the HHSD Board of Commissioners  
14 that Howard S. Wright Construction had executed a contract to build the Silver Sound  
15 Corporation Center for \$43 million.

16 43. On or about October 11, 2000, Mr. MARTIN faxed to the underwriter a  
17 copy of a Howard S. Wright Construction contract that had been falsely and fraudulently  
18 altered, to insert a guaranteed maximum price of \$43 million, after the document was  
19 signed by Howard S. Wright Construction. Howard S. Wright Construction was unaware  
20 of the alteration, did not authorize it, and did not enter into a guaranteed maximum price  
21 contract to build the Silver Sound Corporate Center.

22 44. On or about October 26, 2000, in connection with the bond issuance, Mr.  
23 MARTIN falsely represented in the OS that all necessary entitlements and permits  
24 required for the development had either been issued or would be issued in due course.

25 d. Private Financing

26 45. On or about August 2, 1999, and September 15, 1999, Mr. WHITE falsely  
27 represented in two letters that Signal Mortgage had arranged and obtained a commitment  
28 for \$43 million in financing for the construction of the six office buildings for the Silver

1 Sound Corporate Center.

2 46. On or about November 12, 1999, Mr. MARTIN and Mr. WHITE signed a  
3 false and fraudulent agreement, purportedly with Signal Mortgage, reserving a \$20.5  
4 million line of credit.

5 47. On or about March 10, 2000, Mr. WHITE wrote a letter falsely and  
6 fraudulently representing that Signal Mortgage had committed a \$63 million construction  
7 loan for the Silver Sound Corporate Center and a \$20.5 million line of credit as a  
8 guarantee for repayment of the HHSD bonds.

9 48. On or about March 17, 2000, Mr. MARTIN faxed Mr. WHITE's false and  
10 fraudulent letter of March 10, 2000, to bond counsel.

11 49. On or about April 15, 2000, Mr. WHITE, purportedly acting on behalf of  
12 Signal Mortgage, signed false and fraudulent loan agreements for \$63 million and \$20.5  
13 million, respectively, committing funds from Signal Mortgage as the lender to Silver  
14 Legacy Corporation.

15 50. On or about May 9, 2000, Mr. TEZAK and Mr. MARTIN entered into an  
16 agreement under which Mr. TEZAK would enable Mr. MARTIN to verify the availability  
17 of \$20.5 million or more, for a fee of \$250,000 payable to Mr. TEZAK.

18 51. On or about May 10, 2000, Mr. MARTIN wrote and faxed a letter to an  
19 employee of Wells Fargo Bank asking the employee to contact Mr. TEZAK to confirm  
20 the availability of \$63 million, through a line of credit, for the Silver Sound Corporate  
21 Center project.

22 52. On or about May 11, 2000, in a conference call that included the employee  
23 of Wells Fargo Bank, Mr. TEZAK caused an employee of Goldman Sachs, Private Client  
24 Services, to confirm, orally and by letter, that one of Goldman Sachs' clients had in  
25 excess of \$20 million available, thereby creating the false impression that a \$20.5 million  
26 line of credit was available for the Silver Sound project.

27 53. On or about May 11, 2000, Mr. TEZAK wrote and faxed a letter to the  
28 employee at Wells Fargo Bank falsely and fraudulently stating that an additional \$43

1 million, over and above the \$20.5 million, was available for the Silver Sound project.

2 54. On or about May 11, 2000, Mr. MARTIN and Mr. TEZAK caused the  
3 employee of Wells Fargo Bank, based upon the May 11, 2000, conference call, to falsely  
4 confirm by letter that a line of credit in the amount of \$20.5 million was available and  
5 another \$43 million loan was available for the Silver Sound project.

6 55. On or about May 12, 2000, Mr. WHITE faxed a copy of the May 11,  
7 2000, letter from the employee of Wells Fargo Bank to bond counsel.

8 56. On or about May 12, 2000, Mr. TEZAK falsely confirmed by letter "... that  
9 there are a family of accounts of deposits at Goldman Sachs & Co. (4900 Sears Tower,  
10 Chicago, Illinois) that are sufficient to secure a sixty-three million five hundred thousand  
11 (\$63,500,000) line of credit for the Silver Sound Corporation project. These funds are  
12 available at the time for funding of the project by Signal Mortgage, Inc. and would be  
13 distributed through Wells Fargo Bank."

14 57. On or about May 18, 2000, Mr. SMITH falsely stated to the HHSD Board  
15 of Commissioners that loans of \$20.5 million and \$43 million were committed and  
16 guaranteed by Goldman Sachs and Signal Mortgage.

17 58. On or about June 16, 2000, Mr. SMITH faxed to bond counsel a false and  
18 fraudulent loan agreement representing a loan commitment in the amount of \$20.5 million  
19 from Signal Mortgage.

20 59. On or about October 17, 2000, Mr. SMITH drafted and filed the  
21 incorporation documents for Goldman Sig, Inc., listing Mr. WHITE and Mr. TEZAK as  
22 incorporators and directors, which falsely stated that Goldman Sig, Inc. was created by  
23 Signal Mortgage, and further falsely stated that Goldman Sachs, Private Client Services,  
24 was available to provide loan funding and lines of credit.

25 60. On or about October 25, 2000, Mr. MARTIN, Mr. SMITH and Mr. WHITE  
26 caused and directed the preparation of two construction loan agreements which falsely  
27 and fraudulently represented the commitment of loan funds in the total amount of \$63.5  
28 million to the Silver Sound Corporate Center project.

1        61.    On or about October 26, 2000, in connection with the bond issuance, Mr.  
2 MARTIN, Mr. SMITH, and Mr. WHITE directed and caused the OS to falsely and  
3 fraudulently represent that Goldman Sig, LLC was comprised of Signal Mortgage, Inc., of  
4 which Mr. WHITE was Vice President, and Goldman Sachs.

5        e.    **False Certifications**

6        62.    On or about October 26, 2000, Mr. MARTIN falsely and fraudulently  
7 certified the truth and accuracy of information in the OS.

8        63.    On or about October 26, 2000, Mr. SMITH falsely and fraudulently  
9 certified the truth and accuracy of information in the OS.

10       64.    On or about October 26, 2000, Mr. MARTIN, Mr. SMITH, Mr. WHITE,  
11 and Mr. TEZAK caused bond counsel, disclosure counsel and the underwriter to  
12 separately certify the truth and accuracy of the information contained in the OS. In truth  
13 and in fact, the OS contained numerous material misrepresentations and omissions.

14       f.    **Additional Benefits and Distributions of Proceeds**

15       65.    On or about October 26, 2000, Mr. MARTIN and Silver Sound LLC  
16 received a deed of title to the 25 Private Acres, the purchase of which was funded by  
17 \$6.21 million in bond proceeds.

18       66.    On or about October 26, 2000, Mr. MARTIN received \$1.24 million in  
19 bond proceeds purportedly as reimbursement for funds he previously expended on the  
20 Silver Sound Corporate Center project.

21       67.    On or about October 26, 2000, Mr. SMITH received \$100,000 from bond  
22 proceeds.

23       68.    On or about October 26, 2000, Mr. WHITE was paid a \$215,950 loan fee  
24 from bond proceeds in connection with the purported construction loan for the Silver  
25 Sound Corporate Center project and the line of credit guaranteeing repayment of the  
26 bonds.

27       69.    On or about October 30, 2000, Mr. MARTIN paid Mr. TEZAK \$50,000  
28 from bond proceeds in connection with the purported availability of financing for the

1 Silver Sound Corporate Center project. Mr. TEZAK moved the funds through a nominee  
2 account and through a purported charity before spending them on personal expenses.

3 70. On or about December 7, 2000, Mr. MARTIN presented a fraudulent pay  
4 request to the HHSD Board of Commissioners seeking reimbursement of an additional  
5 \$902,497. The pay request was supported by fictitious and fraudulent invoices.

6 All in violation of Title 18, United States Code, Section 371.  
7

8 **COUNTS 2-10**

9 (Securities Fraud)

10 71. Sections A (Introduction), C (Manner and Means of the Conspiracy and  
11 Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though  
12 fully set forth herein.

13 72. On or about the dates set forth below, at Whidbey Island, Washington, and  
14 at other places within the Western District of Washington, and elsewhere, the defendants  
15 TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD L. TEZAK,  
16 together with other persons known and unknown to the Grand Jury, unlawfully,  
17 knowingly and willfully, directly and indirectly, by the use of means and instrumentalities  
18 of interstate commerce, and of the mails, did use and employ, in connection with the  
19 purchase and sale of securities issued to the investors listed below, manipulative and  
20 deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations,  
21 Section 240.10b-5, by (a) employing devices, schemes and  
22 artifices to defraud; (b) making untrue statements of material facts and omitting to state  
23 material facts necessary to make the statements made, in light of the circumstances in  
24 which they were made, not misleading; and (c) engaging in acts, practices, and courses of  
25 business which operated and would operate as a fraud and deceit upon other persons, to  
26 wit: The bond purchasers, through the underwriter and their respective broker-dealers,  
27 relied upon information provided verbally by the defendants and upon information set  
28 forth in the Preliminary and Official Statements compiled in connection with the bond

1 issuance. Those representations and documents, upon which the underwriter, broker-  
2 dealers and purchasers were entitled to rely, contained numerous fraudulent  
3 misrepresentations and omissions. The defendants concealed the true purchase terms of  
4 the 40 Acres and the acquisition of the 25 Private Acres with bond proceeds. The  
5 defendants falsely represented that the entire Silver Sound Corporate Center had been  
6 pre-leased. Defendants falsely represented an appraised value predicated upon those non-  
7 existent leases. The defendants falsely represented a contract with Howard S. Wright  
8 Construction and falsely represented the status of permits for the project. Finally, the  
9 defendants falsely represented the existence of a line of credit guaranteeing the bonds,  
10 falsely represented a construction loan, and falsely represented Goldman Sachs'  
11 participation in those loans.

12 73. Each purchase set forth below constitutes a representative sample of the  
13 purchase and sale of securities through the use by defendants of manipulative and  
14 deceptive devices and contrivances, and is a separate count of this Indictment:

COUNT	DATE	PURCHASER	AMOUNT
2	10/19/00	R.C.	\$1,000,000
3	10/19/00	G.S.	\$50,000
4	10/19/00	R.T.	\$4,000,000
5	10/20/00	J.L.R.	\$25,000.00
6	10/23/00	E.S.	\$20,000.00
7	10/23/00	R.V.	\$20,000.00
8	10/26/00	J.M.	\$300,000.00
9	10/26/00	A.B.	\$100,000.00
10	12/7/00	A.D.	\$10,000.00

24 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a),  
25 Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States  
26 Code, Section 2.



**COUNTS 11-20**

**(Wire Fraud)**

74. Sections A (Introduction), C (Manner and Means of the Conspiracy and Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though fully set forth herein.

75. On or about the dates set forth below, at Whidbey Island, Washington, and at other places within the Western District of Washington, and elsewhere, the defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD L. TEZAK, together with other persons known and unknown to the Grand Jury, having devised and intended to devise the above-described scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did, for the purpose of executing such scheme or artifice, knowingly and willfully transmit and cause to be transmitted, by wire communication in interstate and foreign commerce, the writings, signs, signals, pictures, and sounds described below, each of which constitutes a representative sample of wire communications in furtherance of the scheme and artifice to defraud, and is a separate count of this Indictment:

COUNT	DATE	SENDER	RECIPIENT	DESCRIPTION
11	3/10/00	Mr. MARTIN, Mukilteo, Washington	Bond counsel, Sacramento, California	Fax of letter from Mr. WHITE confirming loan funds
12	5/11/00	Mr. TEZAK, Everett, Washington	Goldman Sachs, PCS, Chicago, Illinois	Telephone call verifying funds
13	5/12/00	Mr. WHITE, Edmonds, Washington	Bond counsel, Sacramento, California	Fax of letter from Mr. TEZAK confirming loan funds
14	5/19/00	Mr. SMITH and Mr. MARTIN, Mukilteo, Washington	Bond counsel, Sacramento, California	E-mail confirming loan funds and Goldman Sachs participation
15	9/26/00	Mr. SMITH, Mukilteo, Washington	R. A. King, Houston, Texas	Fax of mutual agreement to terminate lease

16	10/11/00	Mr. MARTIN, Mukilteo, Washington	IBIS Securities, Walnut Creek, California	Fax of construction contract
17	10/26/00	US Trust, Los Angeles, California	City Bank/Pacific NW Escrow, Lynnwood, Washington	Wire transfer of \$255,520
18	10/26/00	US Trust, Los Angeles, California	City Bank/Pacific NW Escrow, Lynnwood, Washington	Wire transfer of \$6.21 million
19	10/26/00	US Trust, Los Angeles, California	Wells Fargo Bank-Silver Sound Legacy/Mr. MARTIN, Edmonds, Washington	Wire transfer of \$1.24 million
20	10/26/00	US Trust, Los Angeles, California	US Bank of Washington, Signal Mortgage/Mr. WHITE Everett, Washington	Wire transfer of \$215,950

All in violation of Title 18, United States Code, Sections 1343 and 2.

### **COUNT 21**

(Money Laundering)

76. Section A (Introduction), C (Manner and Means of the Conspiracy and Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though fully set forth herein.

77. On or about October 30, 2000, within the Western District of Washington and elsewhere, EDWARD L. TEZAK conducted and attempted to conduct a financial transaction, in and affecting interstate commerce, which he knew involved proceeds of wire fraud, as alleged in this Indictment, knowing further that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of proceeds of the aforementioned offenses, to wit: Mr. TEZAK caused the purchase, delivery, transfer and disposition of a cashier's check in the amount of \$50,000, derived from fraud proceeds, payable to Air Medical Services of America, purportedly a charitable organization owned and controlled by Mr. TEZAK. The \$50,000 check which was obtained from Wells Fargo Bank in Washington represented payment for Mr. TEZAK's assistance in the fraud scheme, in particular his fraudulent

1 representations concerning the availability of funding for the Silver Sound Corporate  
2 Center project. Upon receipt of the cashier's check, Mr. TEZAK endorsed it as president  
3 of Air Medical Services of America and directed that it be deposited to an account at  
4 Western Security Bank in Montana, which belonged to his brother. EDWARD TEZAK  
5 was not named on the account. Thereafter, Mr. TEZAK caused the funds to be  
6 transferred to an account at Rocky Mountain Bank, also in Montana, belonging to the  
7 purported charitable organization Air Medical Systems of America, owned and controlled  
8 by Mr. TEZAK. Mr. TEZAK then used the funds for his personal benefit.

9 All in violation of Title 18, United States Code, Sections 1956(a)(1)(B) and 2.

10  
11 **COUNTS 22-31**

12 (Money Laundering)

13 78. Section A (Introduction), C (Manner and Means of the Conspiracy and  
14 Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though  
15 fully set forth herein.

16 79. On or about the dates set forth below, within the Western District of  
17 Washington and elsewhere, TERRY R. MARTIN knowingly engaged and attempted to  
18 engage in monetary transactions in criminally derived proceeds, in amounts greater than  
19 \$10,000, and said proceeds were derived from specified unlawful activity, to wit: the  
20 funds and financial transactions described in the following table involved proceeds of the  
21 fraudulent \$1.24 million in municipal bond funds received by defendant Mr. MARTIN  
22 pursuant to the wire fraud alleged in this Indictment. The monetary transactions included:

23 //

24 //

25 //

26 //

27 //

28 //

COUNT	DATE	TYPE	PURPOSE	AMOUNT
22	10/27/00	Wells Fargo Check #1015 Silver Legacy account	To Cap Sante Marine for boat repair	\$14,217.32
23	10/27/00	Cash withdrawal from Wells Fargo Bank, Silver Legacy Account	Purchase of Cashier's Check #6921002156	\$30,000.00
24	11/01/00	Bank of America check #5978 MarWest account	To Quadrant Business Park for office rent	\$13,117.58
25	11/02/00	Bank of America check # 5994 MarWest account	To J. David Smith	\$16,616.49
26	11/02/00	Bank of America check #5996 MarWest account	To Estate of R. D. Adams - furniture purchase	\$36,976.00
27	11/04/00	Bank of America check #5992 MarWest account	To Lind's Jewelers - purchase of three carat diamond ring	\$33,107.31
28	11/13/00	Bank of America check #6010 MarWest account	Purchase of baseball card/sports memorabilia collection	\$37,000.00
29	11/13/00	Bank of America check #6011 MarWest Account	To B & H Construction for purchase of a truck	\$16,000.00
30	12/11/00	Wells Fargo Bank account of Terry and Gail Martin	Cash withdrawal	\$25,000.00
31	12/15/00	Bank of America check #6023 MarWest account	To Eisenhower-Carlson for prior legal fees	\$20,000.00

All in violation of Title 18, United States Code, Sections 1957 and 2.

A TRUE BILL:

DATED: 2/12/2004

*St. Moore*  
FOREPERSON

*Jeffrey C. Sullivan*  
JOHN MCKAY  
United States Attorney

*[Signature]*  
KURT P. HERMANNS  
Assistant United States Attorney

*[Signature]*  
FLOYD G. SHORT  
Assistant United States Attorney